



U.S. Department
of Transportation

Office of the Administrator

800 Independence Ave., S.W.
Washington, D.C. 20591

**Federal Aviation
Administration**

September 16, 2013

The Honorable John D. Rockefeller, IV
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As required by the FAA Modernization and Reform Act of 2012, H.R. 658 (the Act), Section 805, the Federal Aviation Administration (FAA) is pleased to provide the enclosed report.

The Act directs the FAA to determine the feasibility of developing a physical means, or a combination of physical and procedural means, to prohibit individuals other than authorized flight crew members from accessing a flight deck of an all cargo aircraft.

The following report responds to Section 805 and provides the history, methods used, and safety issues considered to determine the viability of a physical barrier to the flight deck of an all-cargo aircraft.

We have sent identical letters to Chairman Shuster, Senator Thune, and Congressman Rahall.

Sincerely,

Michael P. Huerta
Administrator

Enclosure



U.S. Department
of Transportation

**Federal Aviation
Administration**

Office of the Administrator

800 Independence Ave., S.W.
Washington, D.C. 20591

September 16, 2013

The Honorable John Thune
Committee on Commerce,
Science, and Transportation
United States Senate
Washington, DC 20510

Dear Senator Thune:

As required by the FAA Modernization and Reform Act of 2012, H.R. 658 (the Act), Section 805, the Federal Aviation Administration (FAA) is pleased to provide the enclosed report.

The Act directs the FAA to determine the feasibility of developing a physical means, or a combination of physical and procedural means, to prohibit individuals other than authorized flight crew members from accessing a flight deck of an all cargo aircraft.

The following report responds to Section 805 and provides the history, methods used, and safety issues considered to determine the viability of a physical barrier to the flight deck of an all-cargo aircraft.

We have sent identical letters to Chairmen Rockefeller and Shuster and Congressman Rahall.

Sincerely,

Michael P. Huerta
Administrator

Enclosure



U.S. Department
of Transportation

**Federal Aviation
Administration**

Office of the Administrator

800 Independence Ave., S.W.
Washington, D.C. 20591

September 16, 2013

The Honorable Bill Shuster
Chairman, Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As required by the FAA Modernization and Reform Act of 2012, H.R. 658 (the Act), Section 805, the Federal Aviation Administration (FAA) is pleased to provide the enclosed report.

The Act directs the FAA to determine the feasibility of developing a physical means, or a combination of physical and procedural means, to prohibit individuals other than authorized flight crew members from accessing a flight deck of an all cargo aircraft.

The following report responds to Section 805 and provides the history, methods used, and safety issues considered to determine the viability of a physical barrier to the flight deck of an all-cargo aircraft.

We have sent identical letters to Chairman Rockefeller, Senator Thune, and Congressman Rahall.

Sincerely,

Michael P. Huerta
Administrator

Enclosure



U.S. Department
of Transportation

**Federal Aviation
Administration**

Office of the Administrator

800 Independence Ave., S.W.
Washington, D.C. 20591

September 16, 2013

The Honorable Nick J. Rahall, II
Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Congressman Rahall:

As required by the FAA Modernization and Reform Act of 2012, H.R. 658 (the Act), Section 805, the Federal Aviation Administration (FAA) is pleased to provide the enclosed report.

The Act directs the FAA to determine the feasibility of developing a physical means, or a combination of physical and procedural means, to prohibit individuals other than authorized flight crew members from accessing a flight deck of an all cargo aircraft.

The following report responds to Section 805 and provides the history, methods used, and safety issues considered to determine the viability of a physical barrier to the flight deck of an all-cargo aircraft.

We have sent identical letters to Chairmen Rockefeller and Shuster and Senator Thune.

Sincerely,

Michael P. Huerta
Administrator

Enclosure



**FEDERAL AVIATION
ADMINISTRATION**

**Report to Congress:
Limiting Access to Flight Decks of All-Cargo
Aircraft**

**FAA Modernization and Reform Act of 2012 (P.L. 112-95) –
Section 805**

Limiting Access to Flight Decks of All-Cargo Aircraft FAA Modernization and Reform Act 2012

Overview:

On February 14, 2012, President Obama signed into law the FAA Modernization and Reform Act. Section 805 directs the Federal Aviation Administration (FAA) to determine the feasibility of developing a physical means, or a combination of physical and procedural means, to prohibit individuals other than authorized flight crew members from accessing a flight deck of an all cargo aircraft. The following report responds to Section 805 and provides the history, methods used and safety issues considered to determine the viability of a physical barrier – most likely a reinforced door – to the flight deck of an all-cargo aircraft.

History:

Following the tragic events of September 11, 2001, the FAA carefully considered flight deck security on all-cargo airplanes. In addition, members of Congress introduced three separate bills¹ to address the security of all-cargo aircraft and the crews that operated them. These bills were introduced from January through June 2003, but were not enacted into law.

All-cargo airplanes were initially affected by Special Federal Aviation Regulations 92-1, prior to the January 15, 2002, effective date of amendments 25-106 and 121-28², which required a reinforced flight deck door, for those all-cargo airplanes that already had a flight deck door. All-cargo airplanes had been problematic from the beginning of flight deck security initiatives, since the requirements were applied inconsistently, based on the configuration of the airplane. All-cargo airplanes that already had a flight deck door were required to reinforce it, whereas all-cargo airplanes that did not have a flight deck door had no such requirement.

In the meantime, Public Law 108–7 was enacted, which stated in section 355: “No funds appropriated in this Act may be used to apply or enforce a regulatory requirement for strengthening of flight deck doors on classes of aircraft not specifically required to take such action under Public Law 107–71, section 104(a)(1), unless and until the Under Secretary of Transportation for Security, after opportunity for notice and comment, determines that such strengthening is necessary for aviation security purposes.”

After consultation with Transportation Security Administration (TSA), FAA concluded that an optional screening program would provide acceptable flight deck security for all-cargo airplanes, and on July 18, 2003, the FAA issued amendments 121-299 and 129-38³ to permit either a reinforced flight deck door or TSA approved screening. The compliance date for all-cargo airplanes was also extended to October 2003 to align with the Act.

¹ H.R. 1103, H.R. 2455 and S. 165 were introduced in the 108th Congress between January and June 2003.

² Amdt 25-106 and 121-288, 67 FR2118 January 15, 2002

³ Amdt 121-299, 68 FR42881 July 18, 2003

Limiting Access to Flight Decks of All-Cargo Aircraft FAA Modernization and Reform Act 2012

Currently, all-cargo carriers who transport cargo into the United States, within the domestic borders or out of the country, either install reinforced flight deck doors or have procedures that will prevent entry of intruders or an explosive package from being loaded onto the aircraft.

Method Used:

To study the viability of requiring physical barriers on all-cargo aircraft, we reviewed results of extensive discussions and information collected around the time of the rulemaking effort in 2003. Nearly a decade had elapsed since the FAA considered this; therefore, we also reviewed current literature, security methods and protocols and requested input from stakeholders as the FAA Modernization and Reform Act directed. We reached out to air carriers, aircraft manufacturers, and air carrier labor representatives by posting the report for public comment and personally making contact with Airlines for America, Aerospace Industries Association, General Aviation Manufacturers Association, Aeronautical Repair Station Association, and National Air Carrier Association. From the available resources, we have developed this summary as a report to Congress. The report was available for public comment from August 22 to September 22, 2012; however no comments were received.

Summary of the Case in Favor of a Physical Barrier:

In August 2011, Airline Pilots Association (ALPA) published a 'white paper' on Air Cargo Security that stated, "...to deter those persons with malicious intent and impede their ability to attack all-cargo flight crewmembers, gain access to aircraft controls or otherwise execute a hostile takeover of an all-cargo airliner, physical barriers must be designed and installed to separate the all-cargo airliner's flight deck from accessible passenger and cargo areas."

ALPA's analysis further referenced the U.S. Department of Homeland Security's TSA, which stated that it considers the hostile takeover of all-cargo aircraft to be a critical risk. Additionally, TSA identified a number of high risks with cargo: however TSA did not issue security requirements.

Considerations:

The all-cargo portion of the aviation industry is distinct from the passenger-carrying industry. To undertake this study, we considered several factors that distinguish cargo from passenger air carriers. While several all-cargo carriers are household names, there are far more all-cargo carriers that have smaller fleets or just a few aircraft, and several specialize in charter operations.

Cargo aircraft do not have a single interior design configuration. There are distinctive configurations of the interiors which are tailored to the type of cargo that is being carried

Limiting Access to Flight Decks of All-Cargo Aircraft FAA Modernization and Reform Act 2012

to allow for maximum flexibility in loading cargo. An example of an atypical cargo configuration requirement would be one driven by special cargo such as race horses that are transported for sporting events or to new owners.

One aspect of interior design important to consider is the presence or lack of doors to the flight deck. While some all-cargo aircraft have flight deck doors, many others do not. For the ones currently configured without doors, the addition of a reinforced physical barrier would mean additional costs to the operator for design⁴, retrofitting and/or installation. The initial investment would be prohibitively expensive for most of the smaller carriers. Also, the addition of doors adds weight, which in turn means extra fuel consumption and lessens the amount of cargo that can be carried in each load.

It is also important to consider the interaction between typical activities on board cargo aircraft and the addition of a reinforced flight deck door. Cargo pilots may need to depart and re-enter the flight deck multiple times during the course of their flight to check on the aircraft and its contents. This means that if the security of the flight deck depends on a reinforced flight deck door (i.e., additional screening procedures are not employed), security might be reduced from what it is now.

Weighing the Benefits and Risks of the Physical Barrier:

FAA weighed the benefits and risks to aviation safety of adding a physical barrier to isolate the flight deck and crew from the cargo area on all-cargo aircraft. The purpose of the barrier would be to protect the crew from intruders and potentially explosive cargo. We drew from experience from our rulemaking in 2003, our review of current literature, security methods and protocols and our coordination with industry stakeholders.

At the time we received comments on the proposed rule in 2003, several operators, the Cargo Airline Association (CAA) and the Air Transport Association (the previous name of Airlines for America) opposed the mandatory installation of the reinforced flight deck doors in airplanes operated for the carriage of cargo. They commented that the application of the reinforced flight deck doors was impractical for the types of airplanes involved and the installation of doors would compromise emergency egress. They also identified technical issues, such as rapid decompression, that would be difficult to address when retrofitting flight deck doors to airplanes in which no door had been previously installed. Many were opposed to the installation of flight deck doors on cargo airplanes based upon economic considerations, including cost of the doors, installation costs, and lost revenues while airplanes were out of service for modifications. They offered that the government itself should bear the cost of the doors.

The CAA represents 13 all-cargo operators, including the largest operators. The CAA argued that the unique nature of cargo operations would allow a screening program to provide the same level of security as a retrofit flight deck door.

⁴ A design change to an aircraft requires a supplemental type certification (STC).

Limiting Access to Flight Decks of All-Cargo Aircraft FAA Modernization and Reform Act 2012

Conclusions:

In 2003, FAA issued a rule that requires flight deck security for all-cargo operations. This rule allows operators of large cargo airplanes to either install reinforced flight deck doors or adopt enhanced security procedures approved by the TSA. The enhanced security procedures call for screening personnel with access to the aircraft and the cargo itself. Procedures are recorded in the all-cargo carrier's operation specification. At the time of this report, over 90 carriers have opted to use procedures to secure crews and cargo from threats.

We have revisited this requirement and in particular, we have reconsidered the need to mandate the installation of reinforced doors as a physical barrier to the flight deck. Based on a review of current and past information, and in consideration of factors such as economic impact, differences between passenger and cargo operations, and effectiveness of both physical barriers and security procedures, we believe the existing rule is still appropriate and effective for all-cargo aircraft. We believe that having procedures as an alternative to the physical barrier provides the necessary security and safety for the crew and public. Thus, the considerations, assessments and data used to arrive at the current regulatory requirements remain valid.

Attachments:

- Airline Pilots Association International White Paper (Recommendations for Improving the Security of All Cargo Air Operations, August 2011)
- Air Cargo Security Improvement Act, S. 165, Report No. 108-38, January 15, 2003
- Federal Register Vol 68, No 138 / Friday, July 18, 2003 / Rules and Regulations; Department of Transportation, Federal Aviation Administration, 14 CFR Parts 121 and 129 [Docket No. FAA-2003-15653; Amendment Nos. 121-287 and 129-37], RIN 2120 – AH96; Flightdeck Security on Large Cargo Airplanes; pp. 42874 - 42882
- Federal Register Vol 68, No 189 / Tuesday, September 30, 2003 / Rules and Regulations; Department of Transportation, Federal Aviation Administration, 14 CFR Parts 121 and 129 [Docket No. FAA-2003-15653; Amendment Nos. 121-287 and 129-38]; RIN 2120 – AH96; Flightdeck Security on Large Cargo Airplanes; p. 56166



Air Line Pilots Association,
International

WHITE PAPER:
**Recommendations
For Improving the
Security of
All-Cargo Air
Operations**

August 2011



AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

1625 Massachusetts Avenue, N.W., Washington, D.C. 20036
703-481-4440 ■ media@alpa.org ■ www.alpa.org

Recommendations for Improving the Security of All-Cargo Air Operations

An effective air-cargo protective system must focus on the components of the entire supply chain, anticipate opportunities for, and provide reasonable measures to prevent or interrupt, the perpetration of malicious acts.

The Air Line Pilots Association, International (ALPA), is the world's largest airline pilot union, representing more than 53,000 pilots who fly passengers and cargo for 39 airlines in the United States and Canada. ALPA has long supported the concept of "One Level of Safety and Security" in regulations, policies, and procedures related to all aspects of airline operations, including carrying cargo on both passenger and all-cargo airliners. This document provides historical perspective on recent efforts to secure the air-cargo supply chain and then offers recommendations for improving security. To learn more about ALPA, visit the Association's website, www.alpa.org.

Overview

The air-cargo supply chain is a complex, multifaceted mechanism. It begins when a shipper tenders goods for transport, and it potentially involves numerous intermediary organizations such as Indirect Air Carriers (IACs), freight forwarders, and other industry personnel who accommodate the movement of goods. Ultimately, a shipment is received by air carrier personnel, loaded on an airliner, and delivered to its intended destination.

An effective air-cargo protective system must focus on the components of the entire supply chain, anticipate opportunities for, and provide reasonable measures to prevent or interrupt, the perpetration of malicious acts. Such a system must certify the integrity of the goods that are offered and the reliability of the shipper, verify the trustworthiness and proper training of all personnel who maintain access to shipments, and ensure a reliable, secure operating environment as tendered goods move through the system.

Unfortunately, the aviation industry has yet to develop and implement an all-encompassing cargo security system that provides equal protections in the carriage of cargo on passenger and all-cargo aircraft. Since the events of September 11, 2011, government efforts have primarily been focused on improving the protection of passenger airline operations, including the transport of cargo, while relegating all-cargo airline operations to a secondary status. Tremendous progress has been made in better securing the portion of the air-cargo supply chain that is facilitated by passenger airline operations. Because of remaining, demonstrable vulnerabilities impacting all-cargo air operations and the lack of parity in regulatory requirements that affect them, the Air Line Pilots Association, International, believes it is time to take affirmative and critically needed corrective action.

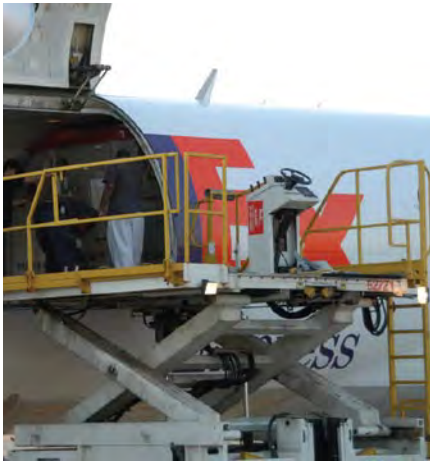
Background

Immediately following the 9/11 terrorist attacks, the U.S. Congress acted to further protect the nation's infrastructure by establishing the Department of Homeland Security (DHS) and the Transportation Security Administration (TSA) and by enacting numerous regulations affecting aviation security. Transport Canada (TC) likewise created the Canadian Air Transport Security Authority (CATSA). Subsequently, various government-sponsored working groups that were composed

ALPA WHITE PAPER

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

Air Cargo Security



... the Final Rule failed to apply an equal standard as is mandated for the security of passenger airline operations, resulting in a clear lack of regulatory parity.

of aviation and other security experts were convened in both countries for the purpose of bolstering protective measures that are primarily directed at the security of *passenger* airline operations. Some of the more notable improvements that resulted included: enhanced airport checkpoint screening; dramatic expansion of the Federal Air Marshal Service (FAMS) and the creation of the Canadian Air Carrier Protective Program (CACPP); requirements for hardened flight deck doors; revised security training guidance for passenger flight crews; and the creation of the Federal Flight Deck Officer (FFDO) program.

In the years that have passed since 9/11, some notable improvements in the security of the all-cargo air domain have also been realized. In Canada, the previously used "Known Shipper" system was replaced by a greatly expanded program based on the concept of the "Regulated Agent," which involved vetting of both shippers and freight forwarders and assigned specific responsibilities for cargo screening, including the concept of the "accountable executive" designated to be personally responsible for the cargo security program. In the United States, based on years of work by the Aviation Security Advisory Committee (ASAC) and its Air Cargo Working Groups, the TSA published the Air Cargo Security Requirements: Final Rule in May 2006. It declared the "hostile takeover of an all-cargo aircraft leading to its use as a weapon" to be a critical risk. Through it, a number of significant improvements to the security of the air-cargo supply chain were mandated, requiring airports, domestic and foreign airlines, and indirect air carriers to implement meaningful additional security measures.

For the first time, per the rule's regulations, all-cargo airlines operating aircraft with a certificated takeoff weight of more than 45,500 kg (100,310.3 lbs) were required to comply with the standardized security requirements of the Full All-Cargo Aircraft Operator Standard Security Program. This mandate was historic, as all-cargo operators had previously been permitted to develop their own security programs on an individual basis and to apply for government approval.

The Final Rule also expanded Security Identification Display Area (SIDA) requirements at some—but not all—airports supporting cargo airline operations. It specified that any airport operating under a full security program required by CFR Section 1542.103(a) must extend SIDA protections to "each part of the air operations area that is regularly used to load cargo on or unload cargo from an aircraft that is operated under a full program or a full all-cargo program."

Although the Final Rule produced major improvements in the security of the air-cargo supply chain and cargo airline operations, it failed to apply an equal standard as is mandated for the security of passenger airline operations, resulting in a clear lack of regulatory parity. In January 2005, ALPA voiced its concerns with respect to this issue in its response to a Notice of Proposed Rulemaking (NPRM), published in the *Federal Register* on Nov. 10, 2004, entitled Air Cargo Security Requirements (Docket No. TSA-2004-19515).

In summary, a number of stakeholders in the all-cargo airline industry and the supply chain that feeds it have been exempted from compliance with many of the stricter security policies that are mandated for

SIDA requirements detail perimeter security protocols, clearly define entry and exit procedures, dictate specific identification display and ramp security procedures, and are predicated on a mandatory 10-year, fingerprint-based criminal-history record check (CHRC) for all employees who maintain unescorted-access privileges within the SIDA.

the handling of cargo in passenger airline operations. What follows is a description of the most urgently needed security enhancements for the all-cargo industry, which are provided with the understanding that improvements must accommodate the flow of commerce and be threat-driven, affordable, and cost-justified.

Recommendations

Security Identification Display Area (SIDA) for All-Cargo Operations

The Air Cargo Security Requirements: Final Rule required that SIDA protocols be extended to all-cargo air-operations areas at airports that offer passenger airline service and have existing SIDs. However, the rule did not require that SIDA safeguards be provided at *all* airports that serve all-cargo airline operations. This lack of consistently applied, standardized SIDA protocols negatively impacts the security of all-cargo aircraft and airline operations.

ALPA recommends that *all* airports that serve regularly scheduled all-cargo operations conducted by transport-category airliners be required to establish and maintain a designated SIDA for such operations. SIDA requirements detail perimeter security protocols, clearly define entry and exit procedures, dictate specific identification display and ramp security procedures, and are predicated on a mandatory 10-year, fingerprint-based criminal-history record check (CHRC) for all employees who maintain unescorted-access privileges within the SIDA.

Consistent application of these standards throughout the all-cargo domain would significantly enhance the security of shipments, flight crews, and parked all-cargo airliners and would greatly improve the background-screening standards needed to properly identify and vet ramp and warehouse personnel.

The Final Rule provides, in part, that: “SIDA Security measures must be extended to secured areas and air operations areas that are regularly used to load cargo on, or unload cargo from, an aircraft operated under a full program or a full all-cargo program. . . . Each airport security program will specify the limits of the cargo operations area to be included in a SIDA, subject to review and approval by TSA.”

ALPA urges the TSA and Federal Security Directors (FSDs) to apply a strict interpretation and enforcement policy related to the extension of SIDA requirements as specified in the Final Rule.

Fingerprint-Based Vetting of Persons with Unescorted Access to Cargo, Cargo Facilities, and All-Cargo Airliners

ALPA has long advocated for “One Level of Safety and Security” in regulations impacting passenger and all-cargo airline operations. Accordingly, we believe that *all* persons with unescorted access to shipments destined for transport on either passenger or all-cargo airliners



**Vulnerabilities associated
with name-based
background checks are
more easily understood
when viewed in terms
of the growing problem
of identity theft and
the potential negative
consequences of
misidentification.**

(i.e., those who receive, inspect, transport, or load air cargo, and those with unescorted access to passenger and all-cargo airliners) must be vetted by means of a fingerprint-based (biometric) criminal-history record check. These individuals are currently subject to a biographic, name-based security threat assessment (STA), which is inadequate to determine the trustworthiness of an employee.

Currently, the fingerprint-based CHRC vetting standard is not applied to the majority of individuals who are employed in the all-cargo supply chain, many of whom are permitted unescorted access to cargo, cargo aircraft, and security-sensitive areas of airports and cargo facilities. In accordance with TSA regulations, these individuals are vetted only by means of a biographical, name-based STA, which looks for a nexus to terrorism and reviews immigration status.

The U.S. Federal Bureau of Investigation (FBI) has publicly stated that it “remains firmly opposed” to name-based background checks for non-criminal justice purposes due to the probability of inaccurate identification.¹ Name-based (non-biometric) means of identification have proved to be unreliable because of confusion related to name similarities and due to the widespread use of aliases (fictitious or assumed names) by people engaged in deceitful or criminal activity. The TSA itself has admitted, “If an individual presents fraudulent documents with an incorrect name, date of birth, country of citizenship, or other data, TSA’s STA will be flawed at inception.”²

Vulnerabilities associated with name-based background checks are more easily understood when viewed in terms of the growing problem of identity theft and the potential negative consequences of misidentification. Such situations can produce either “false positive” or “false negative” results. As a consequence, some persons may be wrongfully excluded from positions for which they are qualified, or conversely, unqualified persons may be mistakenly accepted in positions for which they are unfit because of a criminal past or questionable character or financial status.

The FBI analyzed a statistically valid sample of the 6.9 million fingerprint cards submitted for employment and licensing purposes during FY1997. When compared with the criminal prints on file with the FBI, some 8.7 percent, or approximately 600,000 of the fingerprints, resulted in matches. Of greatest importance, 11.7 percent of the matches (70,200 civil fingerprint submissions) reflected names entirely different from those listed in the applicants’ criminal-history record. The FBI concluded that these persons intentionally provided false names in order to evade detection of their records of prior convictions for serious crimes and that these records were only detected because of positive, fingerprint-based identification.³

¹Testimony of David R. Loesch, assistant director in charge, Criminal Justice Information Services Division, FBI, before the House Committee on the Judiciary, Subcommittee on Crime, regarding H.R. 3410 and Name Check Efficacy (May 18, 2000).

²*Federal Register*, Docket No. TSA-2009-0018, Air Cargo Screening; Interim Final Rule.

³The Attorney General’s Report on Criminal History Background Checks (June 2006).



Without establishing the true identity and investigating the criminal history of an applicant for a job that grants unescorted access to sensitive aviation security areas, it is impossible to reliably develop a sense of the character and trustworthiness of the applicant.

Arguments defending the use of biographical rather than biometric data as the foundation of the background vetting process are often based on anticipated inconveniences resulting from perceived delays in processing fingerprint submissions. According to the Transportation Security Clearinghouse, while initially it took an average of 52 days for STA/CHRC results to be returned, currently the average response time is four hours, due to the use of better technology. As further evidence, a 1999 report issued by the U.S. Attorney General's Office states in part: "Automated fingerprint identification systems and related technologies providing for the electronic capturing and transmission of fingerprint images has made it possible to dramatically reduce fingerprint transmission and processing delays at both the state and federal levels."⁴

At a June 1997 FBI meeting in St. Petersburg, Fla., then-U.S. attorney general Janet Reno explicitly affirmed that although there are time and cost savings associated with a name-based background vetting system, its unreliability stands in stark contrast "to the absolute accuracy and reliability associated with fingerprint-based background checks."

The May 2006 Final Rule on cargo states:

TSA recognizes that there are a number of background techniques that potentially could be applied to various persons in the supply chain. In accordance with our risk based, threat managed approach, TSA has determined that requiring persons with unescorted access to cargo to submit to an STA provides a significant enhancement while limiting costs. We note that persons with more sensitive positions, such as cargo screeners, are subject to CHRCs and additional background checks.

ALPA agrees that it is prudent and necessary to conduct cost-justification calculations in determining the value of proposed security measures. In spite of the evidence indicating that biographic-based STAs do not provide the same reliable results as do biometric-based CHRCs, the decision was made to accept and utilize the STA standard. ALPA disagrees with that practice and submits that the costs associated with the realistic consequences of the hostile takeover of an all-cargo aircraft far outweigh the costs of conducting fingerprint-based CHRCs for those with unescorted access to air cargo, cargo aircraft, and cargo facilities.

There is long-established precedent for using fingerprint-based CHRCs in determining an individual's suitability for hiring. Numerous employment categories exclude convicted felons from eligibility, deeming them to be unsuitable candidates due to security concerns, character issues, and recidivism rates. Without establishing the true identity and investigating the criminal history of an applicant for a job that grants unescorted access to sensitive aviation security areas, it is impossible to reliably develop a sense of the character and trustworthiness of the applicant.

⁴Interstate Identification Index Name Check Efficacy Report of the National Task Force to the U.S. Attorney General, July 1999, NCJ-179358, www.tsa.gov/what_we_do/layers/index.shtml.



The lack of a mandate for reinforced flight deck doors on cargo aircraft is hard to justify when the government has stated that it considers the hostile takeover of an all-cargo aircraft to be a critical risk.

Current U.S. government policies regulating the background vetting of individuals associated with the all-cargo air supply chain permit conditions in which convicted felons and others of questionable character may be granted unescorted access to cargo, cargo facilities, and cargo aircraft. These same policies permit a double standard to exist when compared to the background vetting requirements for individuals with unescorted access to cargo, cargo facilities, and aircraft in the passenger domain. This position is hard to reconcile when contemplating the government's expressed concern with "insider threats" in the aviation domain.

In order to mitigate this vulnerability, ALPA urges that the requirement for fingerprint-based CHRCs, in addition to STAs, be included in the vetting of persons who seek such employment.

Install Hardened Flight Deck Doors on All-Cargo Airliners

After September 11, 2001, the federal government required existing and future passenger airliners, but not all-cargo airliners, to be equipped with reinforced flight deck doors.

Notwithstanding this fact, some cargo airlines have voluntarily installed hardened flight deck doors on their aircraft. Today, however, a significant number of all-cargo airliners are operated in the same airspace as passenger aircraft without the benefits of hardened flight deck doors, leaving them without a way to insulate the flight deck and flight crewmembers from the airplane's interior. In fact, new wide-body cargo airplanes are being designed and built without the protections afforded by the reinforced door.

The potential for a significant lapse in security as a result of these conditions is magnified by the fact that all-cargo airliners frequently carry third-party, noncrew personnel (known as "supernumeraries"), such as couriers and animal handlers. It is also compounded by the fact that all-cargo airliners and their cargo are not protected in the same fashion as their passenger-carrying counterparts while on the ground.

The lack of a mandate for reinforced flight deck doors on cargo aircraft is hard to justify when the government has stated that it considers the hostile takeover of an all-cargo aircraft to be a critical risk. Events in the post-9/11 era have proved that stowaways represent a very real and significant threat to all-cargo airliners. All-cargo airplanes lack many of the additional layers of security identified by the TSA and TC as protecting passenger operations.⁵ This makes the need for a hardened flight deck door all the more obvious and critical.

To deter those persons with malicious intent and impede their ability to attack all-cargo flight crewmembers, gain access to aircraft controls, or otherwise execute a hostile takeover of an all-cargo airliner, physical barriers must be designed and installed to separate the all-cargo airliner's flight deck from accessible passenger and cargo areas. All-cargo

⁵ www.tsa.gov/what_we_do/layers/index.shtm.

flight decks must be clearly delineated and physically protected in the same fashion as the flight decks of passenger airliners, including the provision of reinforced flight deck doors and training for crewmembers in appropriate flight deck access procedures.

Mandated Security Training for All-Cargo Flight Crewmembers and Staff



The TSA has developed and mandated the teaching of a security training guidance document known as the “Common Strategy” for passenger airlines and crews. The TSA has also established but *not mandated* the teaching of equivalent security training guidance known as the “All-Cargo Common Strategy” for all-cargo airline employees and crews.

Government-approved security training, equivalent to that required in the passenger domain, must be mandated for flight crews and ground personnel supporting all-cargo flight operations. Basic and recurrent crew training must include instruction on the All-Cargo Common Strategy, and all-cargo flight crews should be provided access to TSA-issued security directives

(SDs) and information circulars (ICs) that pertain to their role as in-flight security coordinators (ISCs).

All-cargo pilots operate the same type aircraft in the same airspace as do their passenger counterparts. They frequently travel as passengers or in a deadheading status on passenger airlines. Failure to train them in the precepts of the Common Strategy not only diminishes their ability to properly secure their own aircraft and coordinate a response with other industry stakeholders when faced with threatening circumstances. It also prevents them from following industry standards when responding to a threat while traveling in the passenger domain.

Because the training guidance has already been developed by the government and provided to the all-cargo carriers, it should be made a part of the Full All-Cargo Aircraft Operator Standard Security Program, and its administration by all-cargo airlines should be mandated by the TSA, as is done in the passenger domain.

Conduct Vulnerability Assessments and Threat Mitigation

The success of any government-sponsored efforts to assess vulnerabilities within air-cargo supply-chain operations hinges upon meaningful consultation with industry subject matter experts (SMEs). Because SMEs best understand the strengths and weaknesses of their respective operational environments, they are well positioned to pro-

Because the All-Cargo Common Strategy training guidance has already been developed by the government and provided to the all-cargo carriers, the TSA should mandate it, as is done in the passenger domain.

... we continue to be challenged by an intelligent, adaptive adversary who constantly seeks ways to overcome the security measures that are intended to protect the air cargo supply chain that ultimately connects to passenger and all-cargo airliners.

vide critical insight in any attempt to find vulnerabilities contained therein and to establish effective and efficient countermeasures to potential threat vectors.

To facilitate this process, government representatives should engage air cargo SMEs in meaningful dialogue that incorporates current intelligence related to potential threats to the air-cargo supply chain.

ALPA urges all appropriate government entities to identify industry SMEs from critical disciplines within the air-cargo supply chain, solicit their input regarding the strengths and vulnerabilities within their respective operational environments, and share with them current intelligence related to threats to the cargo domain. This consultative process is necessary for government and industry partners to determine and characterize realistic threat scenarios and to develop and implement appropriate threat-mitigation practices.

Threat-Driven, Risk-Managed Approach to All-Cargo Security

In a Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* on Nov. 10, 2004, the TSA proposed, among other things, to address two critical risks in the air cargo environment:

1. the hostile takeover of an all-cargo aircraft leading to its use as a weapon
2. the use of cargo to introduce an explosive device aboard a passenger aircraft.

Subsequently, in the Final Rule, the TSA articulated specific security measures intended to achieve those goals. Since that time, the majority of protective measures implemented in the all-cargo domain have been developed with the primary goal of protecting against hostile takeover.

The introduction of improvised explosive devices (IEDs) on two U.S.-flagged all-cargo aircraft in October 2010 provided evidence that we continue to be challenged by an intelligent, adaptive adversary who constantly seeks ways to overcome the security measures that are intended to protect the air-cargo supply chain that ultimately connects to passenger and all-cargo airliners.

These incidents also demonstrated that, as the threats we face in protecting the all-cargo domain from those who would do it harm continue to evolve, so, too, must the methodologies that are needed to defend against them.

In order to meet this challenge, the security measures protecting the all-cargo supply chain must mature according to a threat-driven, risk-managed methodology. Technological and procedural solutions that meet this need and accommodate the flow of commerce must be identified. ALPA recognizes that this is a difficult undertaking, but submits that failure to do so will lead to unacceptable consequences that pose a severe threat to the aviation industry in general.

... the acceptable costs associated with needed cargo-security enhancements must be measured in terms of the potential price to be paid for failing to properly protect the air-cargo industry from viable threats.



Failure to take appropriate action in this regard will expose the airline industry and the security of our nation to significant risk.

Conclusion

The disruption of an attack against the all-cargo domain in October 2010 indicates that terrorists remain interested in targeting aviation. It is significant that the attack was directed against all-cargo airplanes, because it demonstrates that intelligent, adaptive adversaries have shifted their tactics to circumvent current security measures and exploit the gaps in security standards that exist between passenger airlines and all-cargo airline operations.

While the TSA and TC, in conjunction with industry stakeholders, have done significant work to improve the security of the air-cargo supply chain, acceptable costs associated with needed cargo-security enhancements must be measured in terms of the potential price to be paid for failing to properly protect the air-cargo industry from viable threats.

Since 9/11, cash-strapped and bankrupt passenger airlines have added multiple layers of security enhancements at their own expense, while many more-profitable all-cargo air carriers have failed to keep pace in making similar improvements.

Protecting flight crews, industry personnel, passengers, and airliners engaged in or affected by air-cargo operations requires that government and industry stakeholders cooperate in achieving effective layers of security. A threat-driven, risk-based approach must be used to find and counter existing and future vulnerabilities.

While ALPA did not fully agree with the requirements of the Air Cargo Security Requirements: Final Rule, it signaled great potential for significant improvement in the security of the air-cargo supply chain. Unfortunately, implementation of a number of facets of the rule has not gone smoothly, as described previously.

ALPA commends the TSA for a number of its cargo security efforts, including increased field inspection staff and use of canine resources, research on screening technology, and research on the use of tamper-evident seals to certify the integrity of cargo shipments. ALPA urges the TSA to continue fulfilling its oversight and inspection responsibilities with respect to the security of cargo in both the passenger and all-cargo domains.

ALPA will continue to work in a collaborative spirit with its government and industry partners to identify weaknesses in the air-cargo supply chain and to encourage the development and implementation of reasonable, cost-effective solutions to those vulnerabilities. Failure to take appropriate action in this regard will expose the airline industry and the security of our nation to significant risk.

Calendar No. 76

108TH CONGRESS
1ST SESSION

S. 165

[Report No. 108–38]

To improve air cargo security.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2003

Mrs. HUTCHISON (for herself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

APRIL 24, 2003

Reported under authority of the order of the Senate of April 11, 2003, by
Mr. MCCAIN, with amendments

[Omit the part struck through and insert the part printed in *italie*]

A BILL

To improve air cargo security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Air Cargo Security
5 Improvement Act”.

1 **SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PAS-**
 2 **SENGER AIRCRAFT.**

3 Section 44901(f) of title 49, United States Code, is
 4 amended to read as follows:

5 “(f) CARGO.—

6 “(1) IN GENERAL.—The Under Secretary of
 7 Transportation for Security shall establish systems
 8 to screen, inspect, or otherwise ensure the security
 9 of all cargo that is to be transported in—

10 “(A) passenger aircraft operated by an air
 11 carrier or foreign air carrier in air transpor-
 12 tation or intrastate air transportation; or

13 “(B) all-cargo aircraft in air transpor-
 14 tation and intrastate air transportation.

15 “(2) STRATEGIC PLAN.—The Under Secretary
 16 shall develop a strategic plan to carry out paragraph
 17 (1).”.

18 **SEC. 3. AIR CARGO SHIPPING.**

19 (a) IN GENERAL.—Subchapter I of chapter 449 of
 20 title 49, United States Code, is amended by adding at the
 21 end the following:

1 **~~“§ 44922. Regular inspections of air cargo shipping~~**
 2 **~~facilities~~**

“§ 44923. Regular inspections of air cargo shipping
facilities

3 “The Under Secretary of Transportation for Security
 4 shall establish a system for the regular inspection of ship-
 5 ping facilities for shipments of cargo transported in air
 6 transportation or intrastate air transportation to ensure
 7 that appropriate security controls, systems, and protocols
 8 are observed, and shall enter into arrangements with the
 9 civil aviation authorities, or other appropriate officials, of
 10 foreign countries to ensure that inspections are conducted
 11 on a regular basis at shipping facilities for cargo trans-
 12 ported in air transportation to the United States.”.

13 (b) ADDITIONAL INSPECTORS.—The Under Secretary
 14 may increase the number of inspectors as necessary to im-
 15 plement the requirements of title 49, United States Code,
 16 as amended by this subtitle.

17 (c) CONFORMING AMENDMENT.—The chapter anal-
 18 ysis for chapter 449 of title 49, United States Code, is
 19 amended by adding at the end the following:

“~~44922.~~ 44923. Regular inspections of air cargo shipping facilities”.

20 **SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.**

21 (a) IN GENERAL.—Subchapter I of chapter 449 of
 22 title 49, United States Code, is further amended by adding
 23 at the end the following:

1 **“§ 44923. Air cargo security**

2 **“§ 44924. Air cargo security**

3 “(a) DATABASE.—The Under Secretary of Transpor-
 4 tation for Security shall establish an industry-wide pilot
 5 program database of known shippers of cargo that is to
 6 be transported in passenger aircraft operated by an air
 7 carrier or foreign air carrier in air transportation or intra-
 8 state air transportation. The Under Secretary shall use
 9 the results of the pilot program to improve the known
 10 shipper program.

11 “(b) INDIRECT AIR CARRIERS.—

12 “(1) RANDOM INSPECTIONS.—The Under Sec-
 13 retary shall conduct random audits, investigations,
 14 and inspections of indirect air carrier facilities to de-
 15 termine if the indirect air carriers are meeting the
 16 security requirements of this title.

17 “(2) ENSURING COMPLIANCE.—The Under Sec-
 18 retary may take such actions as may be appropriate
 19 to promote and ensure compliance with the security
 20 standards established under this title.

21 “(3) NOTICE OF FAILURES.—The Under Sec-
 22 retary shall notify the Secretary of Transportation
 23 of any indirect air carrier that fails to meet security
 24 standards established under this title.

25 “(4) SUSPENSION OR REVOCATION OF CERTIFI-
 26 CATE.—The Secretary, as appropriate, shall suspend

1 or revoke any certificate or authority issued under
2 chapter 411 to an indirect air carrier immediately
3 upon the recommendation of the Under Secretary.
4 Any indirect air carrier whose certificate is sus-
5 pended or revoked under this subparagraph may ap-
6 peal the suspension or revocation in accordance with
7 procedures established under this title for the appeal
8 of suspensions and revocations.

9 “(5) INDIRECT AIR CARRIER.—In this sub-
10 section, the term ‘indirect air carrier’ has the mean-
11 ing given that term in part 1548 of title 49, Code
12 of Federal Regulations.

13 “(c) CONSIDERATION OF COMMUNITY NEEDS.—In
14 implementing air cargo security requirements under this
15 title, the Under Secretary may take into consideration the
16 extraordinary air transportation needs of small or isolated
17 communities and unique operational characteristics of car-
18 riers that serve those communities.”.

19 (b) ASSESSMENT OF INDIRECT AIR CARRIER PRO-
20 GRAM.—The Under Secretary of Transportation for Secu-
21 rity shall assess the security aspects of the indirect air
22 carrier program under part 1548 of title 49, Code of Fed-
23 eral Regulations, and report the result of the assessment,
24 together with any recommendations for necessary modi-
25 fications of the program to the Senate Committee on Com-

merce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the *Under* Secretary of Transportation *for Security* such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, as amended by section 3, is amended by adding at the end the following:

“~~44923.~~ 44924. Air cargo security”.

SEC. 5. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that

1 handle air cargo to ensure that the cargo is properly han-
2 dled and safe-guarded from security breaches.

3 **SEC. 6. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.**

4 (a) IN GENERAL.—The Under Secretary of Trans-
5 portation for Security shall establish a program requiring
6 that air carriers operating all-cargo aircraft have an ap-
7 proved plan for the security of their air operations area,
8 the cargo placed aboard such aircraft, and persons having
9 access to their aircraft on the ground or in flight.

10 (b) PLAN REQUIREMENTS.—The plan shall include
11 provisions for—

12 (1) security of each carrier's air operations
13 areas and cargo acceptance areas at the airports
14 served;

15 (2) background security checks for all employ-
16 ees with access to the air operations area;

17 (3) appropriate training for all employees and
18 contractors with security responsibilities;

19 (4) appropriate screening of all flight crews and
20 persons transported aboard all-cargo aircraft;

21 (5) security procedures for cargo placed on all-
22 cargo aircraft as provided in section 44901(f)(1)(B)
23 of title 49, United States Code; and

24 (6) additional measures deemed necessary and
25 appropriate by the Under Secretary.

1 (c) CONFIDENTIAL INDUSTRY REVIEW AND COM-
2 MENT.—

3 (1) CIRCULATION OF PROPOSED PROGRAM.—

4 The Under Secretary shall—

5 (A) propose a program under subsection

6 (a) within 90 days after the date of enactment
7 of this Act; and

8 (B) distribute the proposed program, on a
9 confidential basis, to those air carriers and
10 other employers to which the program will
11 apply.

12 (2) COMMENT PERIOD.—Any person to which
13 the proposed program is distributed under para-
14 graph (1) may provide comments on the proposed
15 program to the Under Secretary not more than 60
16 days after it was received.

17 (3) FINAL PROGRAM.—The Under Secretary of
18 Transportation shall issue a final program under
19 subsection (a) not later than 45 days after the last
20 date on which comments may be provided under
21 paragraph (2). The final program shall contain time
22 frames for the plans to be implemented by each air
23 carrier or employer to which it applies.

24 (4) SUSPENSION OF PROCEDURAL NORMS.—

25 Neither chapter 5 of title 5, United States Code, nor

1 the Federal Advisory Committee Act (5 U.S.C.
2 App.) shall apply to the program required by this
3 section.

4 ***SEC. 7. REPORT ON PASSENGER PRESCREENING PROGRAM.***

5 *(a) IN GENERAL.—Within 90 days after the date of*
6 *enactment of this Act, the Secretary of Homeland Security,*
7 *after consultation with the Attorney General, shall submit*
8 *a report in writing to the Senate Committee on Commerce,*
9 *Science, and Transportation and the House of Representa-*
10 *tives Committee on Transportation and Infrastructure on*
11 *the potential impact of the Transportation Security Admin-*
12 *istration’s proposed Computer Assisted Passenger*
13 *Prescreening system, commonly known as CAPPS II, on*
14 *the privacy and civil liberties of United States Citizens.*

15 *(b) SPECIFIC ISSUES TO BE ADDRESSED.—The report*
16 *shall address the following:*

17 *(1) Whether and for what period of time data*
18 *gathered on individual travelers will be retained, who*
19 *will have access to such data, and who will make de-*
20 *cisions concerning access to such data.*

21 *(2) How the Transportation Security Adminis-*
22 *tration will treat the scores assigned to individual*
23 *travelers to measure the likelihood they may pose a*
24 *security threat, including how long such scores will be*
25 *retained and whether and under what circumstances*

1 *they may be shared with other governmental, non-gov-*
2 *ernmental, or commercial entities.*

3 *(3) The role airlines and outside vendors or con-*
4 *tractors will have in implementing and operating the*
5 *system, and to what extent will they have access, or*
6 *the means to obtain access, to data, scores, or other*
7 *information generated by the system.*

8 *(4) The safeguards that will be implemented to*
9 *ensure that data, scores, or other information gen-*
10 *erated by the system will be used only as officially in-*
11 *tended.*

12 *(5) The procedures that will be implemented to*
13 *mitigate the effect of any errors, and what procedural*
14 *recourse will be available to passengers who believe*
15 *the system has wrongly barred them from taking*
16 *flights.*

17 *(6) The oversight procedures that will be imple-*
18 *mented to ensure that, on an ongoing basis, privacy*
19 *and civil liberties issues will continue to be considered*
20 *and addressed with high priority as the system is in-*
21 *stalled, operated and updated.*

1 **SEC. 8. MODIFICATION OF REQUIREMENTS REGARDING**
 2 **TRAINING TO OPERATE AIRCRAFT.**

3 (a) *ALIENS COVERED BY WAITING PERIOD.*—Sub-
 4 section (a) of section 44939 of title 49, United States Code,
 5 is amended—

6 (1) by resetting the text of subsection (a) after
 7 “(a) *WAITING PERIOD.*—” as a new paragraph 2 ems
 8 from the left margin;

9 (2) by striking “A person” in that new para-
 10 graph and inserting “(1) *IN GENERAL.*—A person”;

11 (3) by redesignating paragraphs (1) and (2) as
 12 subparagraphs (A) and (B), respectively;

13 (4) by striking “any aircraft having a maximum
 14 certificated takeoff weight of 12,500 pounds or more”
 15 and inserting “an aircraft”;

16 (5) by striking “paragraph (1)” in paragraph
 17 (1)(B), as redesignated, and inserting “subparagraph
 18 (A)”;

19 (6) by adding at the end the following:

20 “(2) *EXCEPTION.*—The requirements of para-
 21 graph (1) shall not apply to an alien who—

22 “(A) has earned a Federal Aviation Admin-
 23 istration type rating in an aircraft; or

24 “(B) holds a current pilot’s license or for-
 25 eign equivalent commercial pilot’s license that
 26 permits the person to fly an aircraft with a

1 *maximum certificated takeoff weight of more*
 2 *than 12,500 pounds as defined by the Inter-*
 3 *national Civil Aviation Organization in Annex*
 4 *1 to the Convention on International Civil Avia-*
 5 *tion.”.*

6 **(b) COVERED TRAINING.**—*Section 44936(c) of title 49,*
 7 *United States Code, is amended to read as follows:*

8 **“(c) COVERED TRAINING.**—

9 **“(1) IN GENERAL.**—*For purposes of subsection*
 10 *(a), training includes in-flight training, training in*
 11 *a simulator, and any other form or aspect of train-*
 12 *ing.*

13 **“(2) EXCEPTION.**—*For the purposes of subsection*
 14 *(a), training does not include classroom instruction*
 15 *(also known as ground training), which may be pro-*
 16 *vided to an alien during the 45-day period applicable*
 17 *to the alien under that subsection.”.*

18 **(c) PROCEDURES.**—

19 **(1) IN GENERAL.**—*Not later than 30 days after*
 20 *the date of enactment of this Act, the Attorney Gen-*
 21 *eral shall promulgate regulations to implement sec-*
 22 *tion 44939 of title 49, United States Code.*

23 **(2) USE OF OVERSEAS FACILITIES.**—*In order to*
 24 *implement the amendments made to section 44939 of*
 25 *title 49, United States Code, by this section, United*

1 *States Embassies and Consulates that have*
2 *fingerprinting capability shall provide fingerprinting*
3 *services to aliens covered by that section if the Attor-*
4 *ney General requires their fingerprinting in the ad-*
5 *ministration of that section, and transmit the finger-*
6 *prints to the Department of Justice and any other*
7 *appropriate agency. The Attorney General shall co-*
8 *operate with the Secretary of State to carry out this*
9 *paragraph.*

10 *(d) EFFECTIVE DATE.—Not later than 120 days after*
11 *the date of enactment of this Act, the Attorney General shall*
12 *promulgate regulations to implement the amendments made*
13 *by this section. The Attorney General may not interrupt*
14 *or prevent the training of any person described in section*
15 *44939(a)(1) of title 49, United States Code, who commenced*
16 *training on aircraft with a maximum certificated takeoff*
17 *weight of 12,500 pounds or less before, or within 120 days*
18 *after, the date of enactment of this Act unless the Attorney*
19 *General determines that the person represents a risk to*
20 *aviation or national security.*

21 *(e) REPORT.—Not later than 1 year after the date of*
22 *enactment of this Act, the Secretary of Transportation and*
23 *the Attorney General shall jointly submit to the Senate*
24 *Committee on Commerce, Science, and Transportation and*
25 *the House of Representatives Committee on Transportation*

1 *and Infrastructure a report on the effectiveness of the activi-*
 2 *ties carried out under section 44939 of title 49, United*
 3 *States Code, in reducing risks to aviation and national se-*
 4 *curity.*

5 ***SEC. 9. PASSENGER IDENTIFICATION.***

6 *(a) IN GENERAL.—Not later than 180 days after the*
 7 *date of enactment of this Act, the Under Secretary of Trans-*
 8 *portation for Security, in consultation with the Adminis-*
 9 *trator of the Federal Aviation Administration, appropriate*
 10 *law enforcement, security, and terrorism experts, represent-*
 11 *atives of air carriers and labor organizations representing*
 12 *individuals employed in commercial aviation, shall develop*
 13 *guidelines to provide air carriers guidance for detecting*
 14 *false or fraudulent passenger identification. The guidelines*
 15 *may take into account new technology, current identifica-*
 16 *tion measures, training of personnel, and issues related to*
 17 *the types of identification available to the public.*

18 *(b) AIR CARRIER PROGRAMS.—Within 60 days after*
 19 *the Under Secretary issues the guidelines under subsection*
 20 *(a) in final form, the Under Secretary shall provide the*
 21 *guidelines to each air carrier and establish a joint govern-*
 22 *ment and industry council to develop recommendations on*
 23 *how to implement the guidelines.*

24 *(c) REPORT.—The Under Secretary of Transportation*
 25 *for Security shall report to the Senate Committee on Com-*

1 *merce, Science, and Transportation and the House of Rep-*
 2 *resentatives Committee on Transportation and Infrastruc-*
 3 *ture within 1 year after the date of enactment of this Act*
 4 *on the actions taken under this section.*

5 ***SEC. 10. PASSENGER IDENTIFICATION VERIFICATION.***

6 (a) *PROGRAM REQUIRED.*—*The Under Secretary of*
 7 *Transportation for Security may establish and carry out*
 8 *a program to require the installation and use at airports*
 9 *in the United States of the identification verification tech-*
 10 *nologies the Under Secretary considers appropriate to assist*
 11 *in the screening of passengers boarding aircraft at such air-*
 12 *ports.*

13 (b) *TECHNOLOGIES EMPLOYED.*—*The identification*
 14 *verification technologies required as part of the program*
 15 *under subsection (a) may include identification scanners,*
 16 *biometrics, retinal, iris, or facial scanners, or any other*
 17 *technologies that the Under Secretary considers appropriate*
 18 *for purposes of the program.*

19 (c) *COMMENCEMENT.*—*If the Under Secretary deter-*
 20 *mines that the implementation of such a program is appro-*
 21 *priate, the installation and use of identification verification*
 22 *technologies under the program shall commence as soon as*
 23 *practicable after the date of that determination.*

1 **SEC. 11. BLAST-RESISTANT CARGO CONTAINER TECH-**
 2 **NOLOGY.**

3 *Not later than 6 months after the date of enactment*
 4 *of this Act, the Under Secretary of Transportation for Secu-*
 5 *rity, and the Administrator of the Federal Aviation Admin-*
 6 *istration, shall jointly submit a report to Congress that con-*
 7 *tains—*

8 *(1) an evaluation of blast-resistant cargo con-*
 9 *tainer technology to protect against explosives in pas-*
 10 *senger luggage and cargo;*

11 *(2) an examination of the advantages associated*
 12 *with the technology in preventing damage and loss of*
 13 *aircraft from terrorist action and any operational*
 14 *impacts which may result from use of the technology*
 15 *(particularly added weight and costs);*

16 *(3) an analysis of whether alternatives exist to*
 17 *mitigate the impacts described in paragraph (2) and*
 18 *options available to pay for the technology; and*

19 *(4) recommendations on what further action, if*
 20 *any, should be taken with respect to the use of blast-*
 21 *resistant cargo containers on passenger aircraft.*

22 **SEC. 12. ARMING PILOTS AGAINST TERRORISM.**

23 *(a) FINDINGS AND PURPOSE.—*

24 *(1) FINDINGS.—Congress makes the following*
 25 *findings:*

1 (A) During the 107th Congress, both the
2 Senate and the House of Representatives over-
3 whelmingly passed measures that would have
4 armed pilots of cargo aircraft.

5 (B) Cargo aircraft do not have Federal air
6 marshals, trained cabin crew, or determined pas-
7 sengers to subdue terrorists.

8 (C) Cockpit doors on cargo aircraft, if
9 present at all, largely do not meet the security
10 standards required for commercial passenger air-
11 craft.

12 (D) Cargo aircraft vary in size and many
13 are larger and carry larger amounts of fuel than
14 the aircraft hijacked on September 11, 2001.

15 (E) Aircraft cargo frequently contains haz-
16 ardous material and can contain deadly biologi-
17 cal and chemical agents and quantities of agents
18 that caused communicable diseases.

19 (F) Approximately 12,000 of the Nation's
20 90,000 commercial pilots serve as pilots and
21 flight engineers on cargo aircraft.

22 (G) There are approximately 2,000 cargo
23 flights per day in the United States, many of
24 which are loaded with fuel for outbound inter-
25 national travel or are inbound from foreign air-

1 ports not secured by the Transportation Security
2 Administration.

3 (H) aircraft transporting cargo pose a seri-
4 ous risk as potential terrorist targets that could
5 be used as weapons of mass destruction.

6 (I) Pilots of cargo aircraft deserve the same
7 ability to protect themselves and the aircraft they
8 pilot as other commercial airline pilots.

9 (J) Permitting pilots of cargo aircraft to
10 carry firearms creates an important last line of
11 defense against a terrorist effort to commandeer
12 a cargo aircraft.

13 (2) *SENSE OF CONGRESS.*—It is the sense of
14 Congress that a member of a flight deck crew of a
15 cargo aircraft should be armed with a firearm to de-
16 fend the cargo aircraft against an attack by terrorists
17 that could result in the use of the aircraft as a weap-
18 on of mass destruction or for other terrorists purposes.

19 (b) *ARMING CARGO PILOTS AGAINST TERRORISM.*—
20 Section 44921 of title 49, United States Code, is amended—

21 (1) by striking “passenger” in subsection (a)
22 each place that it appears;

23 (2) by striking “or,” and all that follows in sub-
24 section (k)(2) and inserting “or any other flight deck
25 crew member.”; and

1 (3) *by adding at the end of subsection (k) the fol-*
 2 *lowing:*

3 “(3) *ALL-CARGO AIR TRANSPORTATION.—For the*
 4 *purposes of this section, the term air transportation*
 5 *includes all-cargo air transportation.”.*

6 (d) *IMPLEMENTATION.—*

7 (1) *TIME FOR IMPLEMENTATION.—The training*
 8 *of pilots as Federal flight deck officers required in the*
 9 *amendments made by subsection (b) shall begin as*
 10 *soon as practicable and no later than 90 days after*
 11 *the date of enactment of this Act.*

12 (2) *EFFECT ON OTHER LAWS.—The requirements*
 13 *of subparagraph (1) shall have no effect on the dead-*
 14 *lines for implementation contained in section 44921*
 15 *of title 49, United States Code, as in effect on the day*
 16 *before the date of enactment of this Act.*

17 **SEC. 13. REPORT ON DEFENDING AIRCRAFT FROM MAN-**
 18 **PORTABLE AIR DEFENSE SYSTEMS (SHOUL-**
 19 **DER-FIRED MISSILES).**

20 *Not later than 90 days after the date of the enactment*
 21 *of this Act, the Secretary of Homeland Security shall issue*
 22 *a report to the Senate Committee on Commerce, Science,*
 23 *and Transportation and the House of Representatives Com-*
 24 *mittee on Transportation and Infrastructure on how best*
 25 *to defend turbo and jet passenger aircraft from Man-Port-*

1 *able Air Defense Systems (shoulder-fired missiles). The re-*
2 *port shall also include actions taken to date, counter-*
3 *measures, risk mitigation, and other activities. The report*
4 *may be submitted in classified form.*

Calendar No. 76

108TH CONGRESS
1ST SESSION

S. 165

[Report No. 108-38]

A BILL

To improve air cargo security.

APRIL 24, 2003

Reported with amendments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 129

[Docket No.: FAA-2003-15653; Amendment Nos. 121-287 and 129-37]

RIN 2120-AH96

Flightdeck Security on Large Cargo Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action provides an alternative means of compliance to operators of all-cargo airplanes that are required to have a reinforced security flightdeck door. This rule allows those operators to either install reinforced doors or adopt enhanced security procedures approved by the Transportation Security Administration.

DATES: This rule is effective on August 18, 2003. Comments must be received by September 16, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2003-15653 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, Program Management Branch (AFS-200) Flight Standards Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9579; facsimile (202) 267-5229, e-mail joe.keenan@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and

Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made:

"Comments to Docket No. FAA-2003-15653." The postcard will be date-stamped by the FAA and mailed to the commenter.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

- (1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>).
- (2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."
- (3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at <http://www2.faa.gov/avr/arm/nprm.cfm?nav=nprm> or the Federal Register's Web page at <http://www.gpoaccess.gov/fr/index.html>.

www2.faa.gov/avr/arm/nprm.cfm?nav=nprm or the Federal Register's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this final rule.

What Is the Small Business Regulatory Enforcement Fairness Act?

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbrefa.htm>, or by e-mailing us at 9-AWA-SBREFA@faa.gov.

Background

What Rule Changes Are You Making?

We are issuing a rule that allows an alternative means of compliance with a current FAA regulation. This rule allows operators of large cargo airplanes to either install reinforced flightdeck doors or adopt enhanced security procedures approved by the Transportation Security Administration.

Isn't Airplane Security the Responsibility of an Agency Other Than the FAA?

Yes, the Aviation and Transportation Security Act (ATSA) enacted by Congress on November 19, 2001, transferred airplane security to the Transportation Security Administration (TSA). The safety of the physical airplane structure and the operational rules of airplanes are still the responsibility of the FAA. We work with the TSA when our interests overlap to further our missions of safety and security. We coordinated this rule change closely with the TSA. The TSA has significantly contributed to this rule and supports the rule change.

How Many Rules Are Affected by This Change?

This change has significant effects on two rules. First, Title 14 Code of Federal Regulations (14 CFR), 121.313(j), which applies to the operation of U.S. transport category all-cargo airplanes, is amended to permit operators to adopt a

TSA approved security program in lieu of installing reinforced doors. The second rule, 14 CFR 129.28(c), applies to the operation of transport category all-cargo airplanes by foreign operators within the United States. This amendment permits foreign operators to adopt a TSA approved security program in lieu of installing reinforced doors.

Why Were the Old Rules Adopted?

The former rules were adopted in response to the terrorist attacks against the United States on September 11, 2001, and the ATSA enacted by Congress on November 19, 2001. The terrorist acts demonstrated a need to improve design as well as operational and procedural security of the flightdeck.

What Are the Flightdeck and the Flightdeck Door?

The flightdeck, or cockpit, is that area where the pilots fly the airplane. The flightdeck door is what separates the pilots from the passengers on passenger airplanes. On passenger airplanes, there are operating rules that require a door between the flightdeck and the passenger compartment. These rules do not require that cargo airplanes have a flightdeck door. Some cargo airplanes have flightdeck doors and many do not.

Traditionally, the door merely served as a privacy door to assure that the pilots were able to concentrate on flying the airplane. As discussed in the original reinforced door rulemakings, efforts were underway prior to the September 11, 2001, attacks to develop standards for a stronger door. The attacks led to the immediate adoption of those standards and the requirement for installation of stronger doors.

What Did the Old Rules Require?

On January 15, 2002, parts 25 and 121 were amended to set new standards for flightdeck doors (Amendments 25-106 and 121-288; 67 FR 2118; Docket No. FAA-2002-11032). Section 25.795 was amended to set standards for reinforcing flightdeck doors. The new standards require them to resist forcible intrusion and ballistic penetration.

Section 121.313(f) was amended to mandate installation of the reinforced doors on certain airplanes not later than April 9, 2003. The affected airplanes included transport category all-cargo airplanes operated under part 121 which had flightdeck doors installed on or after January 15, 2002.

On June 21, 2002, part 129 was amended to apply similar standards to foreign operators operating into the United States (Amendment 129-33; 67 FR 42450; Docket No. FAA-2002-

12504). Section 129.28 requires installation of the reinforced door not later than April 9, 2003. The affected airplanes include transport category all-cargo airplanes operated under part 129 which had flightdeck doors installed on or after June 21, 2002.

On December 23, 2002, the FAA issued amendment No. 129-36 as a result of input received from a public hearing held on July 30, 2002, and comments received as a result of the rulemaking. Amendment 129-36 clarifies the applicability of the part 129 regulation for foreign operators.

In effect, section 355 of the Consolidated Appropriations Resolution, Pub. L. 108-007, postponed the compliance date for this section as to all-cargo aircraft until October 1, 2003. We have changed the cargo portion of the rule to replace the April 9, 2003, compliance date with October 1, 2003, to correspond to the Congressional action.

What Has Happened Since the Old Rules Were Adopted?

The old rule was an FAA response to the potential security threat to cargo airplanes. Because of the urgency of the response, there was little time for receiving and evaluating a broad range of inputs on the issues and alternatives. But with time, and with additional input from knowledgeable parties, the FAA has identified several elements that convince us that a change is needed. Over the last year, the FAA has received information from parties through comments responding to several rulemakings, as well as petitions for exemption and a petition for rulemaking.

Public Comments on Prior Reinforced Flightdeck Door Rulemakings

As discussed above, the FAA has had two rulemaking actions that established reinforced door requirements. We received public comments on both rules. The following discussion is limited to those comments related to this specific rule change. The FAA will respond to the other comments in a separate document that will be published later in the **Federal Register**.

Part 121

Three pilot groups (Air Line Pilots Association International (ALPA), FedEx Pilots Association, and the Coalition of Airline Pilots Association (CAPA)), a public safety group (Aviation Policy Institute), and one individual suggested expanding the reinforced door requirement to all cargo airplanes. This would require installation of reinforced doors on cargo airplanes that do not

already have any door. The principal arguments of those parties were centered on increased flightdeck security. Those commenters expressed concerns about the qualification, screening, and identification of the people authorized to ride on the subject airplanes.

ALPA stated that meetings with safety representatives from many of the cargo airlines revealed it is potentially easier for an intruder to gain access to cargo airplanes because of limited ground security procedures, less secure ramp areas, and less scrutiny of persons carried on board cargo flights. ALPA stated that flight attendant and passenger intervention have been discussed as a strategy to defeat the attempts of an intruder to commandeer a passenger airplane. But cargo operators lack the potential benefit of flight attendant or passenger intervention.

Additionally, three commenters proposed enhancement of flightdeck security beyond that provided by the reinforced doors, suggesting the use of dual doors (FedEx Pilots Association) and reinforcing the bulkheads between the flightdeck and other airplane areas (ALPA and the CAPA).

Three operators and the Cargo Airline Association (CAA) and the Air Transport Association opposed the installation of the reinforced flightdeck doors in airplanes operated for the carriage of cargo. Those comments included two comments that the application of the reinforced flightdeck doors was impractical for the types of airplanes involved and the installation of doors would compromise emergency egress. They also stated it would be difficult to address issues, such as the rapid decompression, when retrofitting flightdeck doors to airplanes in which no door had been previously installed. Six commenters were opposed to the installation of flightdeck doors on cargo airplanes based upon economic considerations, including cost of the doors, installation costs, and lost revenues while airplanes were out of service for modifications. Further, two commenters indicated that the costs should be borne by the government.

The CAA represents 13 all-cargo operators, including the largest operators. In its comments, the CAA argued that the ATSA did not require that cargo airplanes be equipped with the reinforced flightdeck door. Therefore, the FAA rule was procedurally deficient because there was inadequate justification for adopting the rule without prior public comment. The CAA also argued that the unique nature of cargo operations would

allow a screening program to provide the same level of security as a retrofit flightdeck door.

Part 129

Seven of the 32 commenters to Amendment 129–33 addressed all-cargo operations. Except for the following three comments, commenters raised similar issues described in the discussion of part 121 above. One commenter stated that of all the various types of operators serving the U.S., cargo operators, particularly those that operate on a charter basis, pose the least risk of having their aircraft used as weapons by terrorists. The commenter contends that cargo charter operations do not publish a schedule for services and it would be difficult to know in advance when or where the airplane would be operated.

Another commenter explained that crewmembers leave the flightdeck on a regular basis to visit the galley or lavatory and to perform in-flight duties. There is no flight attendant to ensure the area is clear and secure before a flight crewmember leaves. Also, in the event of an intrusion when a flightcrew member is absent from the flightdeck, a reinforced door will prevent reentry to assist other flightcrew members. This commenter also states that this rule will place it at a competitive disadvantage compared to operators whose fleets are designed and operated with no doors.

At the public meeting, one foreign cargo operator explained that he might not know until 3 hours before a flight which airplane would be used on flights to or from the U.S. The operator believed it would be much more efficient and effective to establish security procedures controlling who has access to the airplanes rather than modifying the doors.

Requests for Exemptions

Since January 30, 2002, 11 cargo operators have filed exemption requests from the reinforced door requirements. Two sought relief from the requirement for internal locking devices on existing doors (Special Federal Aviation Regulation (SFAR) 92), three sought relief from part 121, and six sought relief from part 129. In supporting the need for an exemption, requesters cited economic burden caused by the need to make modifications to their airplanes. In several instances, operators indicated that they have a small fleet of airplanes and engineering and design costs would be borne by them alone. The requesters also identified a safety concern with the requirements to close and lock the flightdeck doors. The safety concern is the lack of adequate emergency exits

available to persons on either side of a locked reinforced door. Also, four operators indicated their security measures for allowing riders on their cargo airplanes are strict and would compensate for not reinforcing the door.

Petition for Rulemaking

Atlas Air submitted a petition for rulemaking that requested the FAA allow cargo carriers to adopt enhanced security plans in lieu of the reinforced flightdeck doors. Most of the issues raised by Atlas were also raised by commenters on the prior reinforced flightdeck rulemakings discussed above. Atlas supported its request with the following points:

- The original rule was premised on the inadequacy of then existing security procedures
- The FAA has since issued detailed procedures for access to cargo airplane flightdecks
- The TSA has since issued additional security requirements that cover certain cargo airplanes
- Reinforced doors are necessary on passenger but superfluous on cargo airplanes
- Cargo operations do not depend on riders
- The number of persons on cargo airplanes is quite small
- Pilots of cargo airplanes are more willing to exclude suspicious persons
- Cargo operators can impose more screening without disrupting schedules
- Access to cargo airplanes is tightly controlled by practice and regulation
- A reinforced door is less effective on a cargo airplane since a terrorist may have an unfettered opportunity to penetrate it
- Keeping terrorists off cargo airplanes is a better alternative
- Cargo doors are expensive and resources could be better utilized elsewhere
- Cost of reinforced doors is much higher than the FAA estimates
- Money is better spent on security procedures keeping terrorists off cargo airplanes
- Passenger airplanes are a higher priority for reinforced doors than cargo airplanes
- Congress is urging a review of reinforced door requirements for cargo airplanes
- ATSA mandated reinforced doors on passenger airplanes, not cargo airplanes
- Two proposed bills before Congress would require reexamination of the issue

Why Are the Changes Better Than the Old Rule?

This rule provides an alternative means of compliance for operators. It allows them to meet the security needs for their particular operation through security procedures rather than doors. This option will be available through the security expertise of the TSA. As the economic analysis later in this rule reflects, many operators have airplanes both with and without flightdeck doors. If they adopt security procedures for the airplanes with the doors, they must apply those same procedures to airplanes without doors. By providing the option, operators can decide where to concentrate their limited economic resources. Also, nothing in this rule prevents operators from using both doors and security procedures if they choose.

What Factors Influenced the Decision To Change the Rule?

Viability of Enhanced Security Procedures

In acting quickly to establish current standards, the FAA included cargo airplanes with doors in the same security category with passenger carrying airplanes. At the time, security procedures for riders on cargo airplanes had not been enhanced. With a diverse population flying on commercial passenger airplanes, a reinforced door to the flightdeck is essential. In comparison, cargo operations transport far fewer riders, those riders are authorized by the company, and cargo operators have greater discretion in deciding who rides on the airplane. Security procedures can be adapted to fit the needs of cargo operations making the reinforced door less significant in terms of airplane security.

Safety Issues Unique to Cargo Designs

People behind the locked doors on passenger airplanes have multiple exits from the plane. Cargo riders may not. On several models of cargo airplanes, some exits are blocked by cargo or by airplane modifications. Often, modifications of cargo airplanes result in emergency exits being on the other side of the flightdeck door. As a result, rider safety may be significantly compromised if a locked door blocks access to the exits. Without a better security option, the FAA originally concluded that this safety concern was outweighed by the security concern with hijacking. However, since enhanced security procedures are now a viable option, the safety of occupants in an emergency evacuation takes on a higher priority.

Differences in Locations of Persons on Flightdeck of Cargo and Passenger Airplanes

The number and variety of persons who frequently ride on the flightdeck of cargo airplanes are different from those who ride on passenger airplane flightdecks. Under current screening procedures, persons may have access to the flightdeck on cargo airplanes without having undergone the same level of screening used on passenger airplanes. These persons may be in front of the door or behind it. As one commenter pointed out, locking a reinforced door could result in a "bad" person being in front of the door, while preventing a "good" person seated behind the door from assisting the pilots. This may render reinforced doors less valuable on cargo airplanes.

Need for Tools and Equipment

Cargo operators carry diverse cargo, such as animals and dangerous goods. This requires them to carry persons who need specialized tools and equipment during the flight. This necessary equipment is prohibited on passenger flights. Also, on passenger flights, crewmembers, Federal Air Marshals, and passengers can intervene to inhibit efforts to penetrate the reinforced doors. On cargo operations, the limited number of riders means a terrorist might have time and equipment to defeat the protection offered by the doors.

The Cost of the Doors

The original analysis of reinforced door costs was made before designs had been proposed and approved. The FAA has learned that the door will cost substantially more than originally estimated. Instead of \$17,000, nearly all doors will cost at least \$50,000, and some as much as \$210,000. This cost would be acceptable if it were the only alternative to preventing hijackings. But, with the enhanced security procedures now available, it is incumbent on the FAA to allow operators to select the option that best fits their needs.

What Comments Do You Believe Support This Rule Change?

As discussed above, the petition of Atlas Air contained many suggestions and comments that were common to comments received on the original rules. As should be obvious from the rationale explained in the preceding answer, we found many of their points to be persuasive and thus supportive of this rule change.

What Comments Do You Believe Would Not Support This Rule Change?

Many comments were received supporting the original rule. In particular, pilots and organizations representing pilots believed that the reinforced door was a valuable step toward assuring the safety of the flightcrew and ultimately the airplanes. These commenters urged additional steps for cargo airplanes, to include expanding the rule to require installation of reinforced doors on all cargo airplanes. This would require installation of reinforced doors on those cargo airplanes that have not had doors. This option will be discussed later.

We expect that these commenters would not favor this rule change and would see it as a lessening of security. We expect to receive comments on this during the comment period. At this point, we are confident that the plans that will be approved by the TSA will be comparable to the security provided by the doors. As discussed above, we believe the change will be better than the reinforced doors in some respects.

Were There Comments Submitted on the Original Rules That Were Not Considered in This Rule Change?

Yes. Some comments dealt with issues other than cargo airplanes. Some comments on cargo airplanes were not relevant to this rule change. We will respond to these comments in a separate document that will be published later in the **Federal Register**.

What Other Options Were Considered?

Maintaining the Status Quo

We considered this option but decided that the status quo was no longer justified. When the rule was originally adopted, there was no alternative that would provide security for the flightdeck. As discussed previously, this is no longer the case and security procedures can provide a viable security alternative. Operators should have the option of selecting which alternative to use to meet the security goal.

Expanding the Reinforced Door Rule to All Cargo Airplanes

As mentioned previously, this was an option originally supported by pilots and pilot organizations. Whether this is still the case in light of changes since adoption of the original rule will be revealed during the comment period on this rule.

We do not believe that this expansion is either practical or necessary. Many cargo airplanes have no door between the pilot area and aft portions of the

flightdeck. On some airplanes, there is existing structure that would readily support a new door. On many other airplanes, however, there is no structure to which a door could be fitted. We have spent over a year administering the current reinforced door rule. We have learned that simply replacing existing doors can be expensive and time-consuming, particularly in design development and approval. Undertaking a retrofit requirement for all cargo airplanes could not be done in the time frame relevant to this rule.

Further, since we have identified security procedures as a valid alternative to a reinforced door in cargo operations, there is currently no justification for the substantial cost involved in retrofit.

As discussed in the next question and answer, responsibility for aviation security and threat assessment resides with the TSA. If the TSA decides that the threat warrants expansion of the reinforced door requirement, the FAA will assist them in developing relevant rules and standards.

Expanding Cargo Security Requirements to All Cargo Operations

The old rule, and this new rule change, cover only those cargo airplanes that had doors. With the transfer of security responsibility, the TSA assumed responsibility for developing and imposing security requirements on all aviation operations. As a result, the FAA no longer has the authority to unilaterally establish security requirements applicable to all cargo operators.

Several operators, including Atlas Air, suggested that expansion of security programs to the entire air cargo industry would be beneficial. The FAA and TSA agree with those comments. The TSA will commence a separate rulemaking on this subject. We hope this expansion will be, in part, a consequence of this rule change. The FAA supports this expansion and will assist the TSA in implementing any changes it deems appropriate.

Eliminating the Ability of Cargo Carriers To Carry Supernumeraries

We considered reducing the ability of cargo operators to carry supernumeraries. Under 14 CFR 121.547 and 121.583, supernumeraries are persons who may be on board but who are not essential to the actual operation of the airplane. Limiting the carriage of supernumeraries would have a crippling effect on many cargo operations. Although not in the passenger carrying business, cargo operators need to carry riders who can handle cargo either

during the flight or at remote destinations where trained support is not available. They often carry additional pilots for long flights and mechanics to service the airplane at remote locations. These concerns were identified in the petitions for exemption mentioned earlier. As a result, we conclude this is not a viable option for protecting the flightdeck of cargo airplanes.

Supernumeraries were partially addressed by the original rule changes that accompanied the reinforced door requirements. In the original rules, we modified § 121.547 and added § 129.28(d) to limit the number of persons authorized on the flightdeck and required additional approvals for such access.

Case-by-Case Exemptions Allowing Security Programs in Lieu of Reinforced Doors

We considered requiring individual exemption applications from cargo operators instead of a rule change. This has been the process for dealing with problems raised under SFAR 92 with its requirement for internal locking devices on flightdeck doors. This has not been efficient, even for the relatively small number of SFAR exemptions.

We anticipate that most, if not all, cargo operators would file exemption requests should we adopt this option instead of a rule change. Dealing with exemption requests would be inefficient and lead to lengthy delays and uncertainty, even if most petitioners raised the same issues. Our immediate adoption of this rule seeks to avoid uncertainty. Also, just as the operators wish to focus their resources on addressing security, we want to use our resources on matters other than individual exemption requests.

Does This Rule Establish Specific Security Requirements?

This rule does not require specific security procedures. Rather, a carrier may choose to adopt a security program rather than harden its doors. Security programs may vary from operator to operator because airplanes used, routes and missions flown, and persons carried are not uniform. Instead of establishing specific criteria for a security program, this rule provides flexibility to the operator and the TSA to meet specific needs and threats.

Who Will Approve New Security Procedures?

The TSA is the agency with approval authority for security programs and procedures related to alternative compliance with this rule. Operators

who have principal security inspectors should work with them in preparing programs and procedures.

Is This an Airplane Security Issue or an Economic Issue?

Implementation of any security measure carries with it some costs. The subsequent economic analysis discusses the relative costs of installing reinforced doors versus adopting a security program. Adopting the security program option will cost operators less than installing the reinforced doors. If this were not the case, operators would opt for the doors instead of the security program. But this rule is not just about money. As discussed previously, reinforced doors are not as effective a security measure on cargo airplanes as on passenger airplanes. On many cargo designs, reinforced doors raise safety issues that do not exist on passenger airplanes. Although cost is an issue, it is not the deciding factor in adopting this rule. Security is paramount.

Will Cargo Airplanes Be Less Secure if Reinforced Doors Are Not Required?

Airplanes would be less secure if the requirement were dropped without any compensating action. The compensating action expected in this rule is development and implementation of alternative security plans to control who enters cargo aircraft. This will compensate for the lack of doors by keeping potential terrorist's out of the airplane.

As explained above, this rule does not itself establish the criteria for the new program. That program will come from the TSA.

Most importantly, when a security plan is developed, it can be used by all cargo operators, not just those with doors. The result will be greater security for all cargo operations, not just those with existing doors.

Also as discussed above, we believe that the reinforced doors produce vulnerabilities both from a safety and security standpoint that are not present in passenger carrying operations. Providing an alternative to installing reinforced doors reduces those risks.

What Airplanes or Operations Will Be Affected by This Rule Change?

This rule will affect both U.S. and foreign operators. For foreign operators, this rule also clarifies the coverage of the rule.

For U.S. certificated operators, only those operations conducted under part 121, utilizing transport category airplanes, for the sole purpose of the carriage of cargo, will be affected. And those operations are only affected if they

had a flightdeck door installed on or after January 15, 2002. Those all-cargo operators electing to achieve compliance through a TSA approved security program must apply the security program to the operator's entire fleet of aircraft, not just those with doors. There will be no change for those cargo operators who elect to install the reinforced flightdeck door.

Foreign operators conducting cargo operations under § 129.1(a) are covered when they are operating airplanes with a payload capacity greater than 7,500 pounds and with a flightdeck door installed on or after June 21, 2002. Those all-cargo operators electing to achieve compliance through a TSA approved security program must apply the security program to the operator's entire fleet of aircraft, not just those with doors. There will be no change for those cargo operators who elect to install the reinforced flightdeck door. In addition, nothing precludes a foreign all-cargo air carrier from implementing a TSA security program in addition to reinforcing its flightdeck doors.

Why Does the Rule Have a June 21, 2002, Threshold Date for Foreign Operators and a January 15, 2002, Threshold Date for U.S. Operators?

Section 129.28(a)(2) establishes a compliance threshold date of June 21, 2002. Section 121.313(j)(2) establishes a compliance threshold date of January 15, 2002. These threshold dates identify the airplanes that must comply with the rule, and maintains the applicability of the requirement even if operators remove the non-reinforced doors after that date. If an airplane had a non-reinforced door in place (installed) on the threshold date, or if one is installed on the airplane after that date, then the rule requires that such a door be replaced with a reinforced door. Without the threshold date, operators could avoid compliance with the rule by removing the non-reinforced doors. The threshold dates correspond with the issue dates of the original rules imposing the reinforced door requirement on operators. The dates differ because the original rules were not issued at the same time.

How Will Compliance Be Monitored?

The FAA is working with the TSA to establish procedures to share information and monitor compliance with various aspects of aircraft security. This is a new relationship and details on specific aspects of the cooperative monitoring effort are not currently in place. We expect, however, that the TSA approval of programs under this rule will occur in cooperation with the FAA

and the FAA will receive information on approved programs either directly from the TSA or through reporting requirements placed on operators. A formal process for either of these alternatives will be established to assure compliance by affected operators.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined this rule (1) has benefits which justify its costs; (2) is a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 and is “significant” as defined in DOT’s Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will have little effect on international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarizes them below.

How Many Operators and Airplanes Are Affected by the Rule?

The FAA determined that 46 U.S. air cargo carriers with 1,132 transport category cargo airplanes operate under part 121. Brokers and leasing companies currently hold 125 turbojet cargo airplanes that could be operated under part 121. Thus, 1,257 cargo airplanes could be affected by this rule. The FAA determined that 540 of these airplanes have a flightdeck door, while 26 air cargo carriers operate at least one airplane with a flightdeck door. Of these 26 air cargo operators, 3 are likely to be large operators (more than 50 airplanes), 9 are likely to be medium sized operators (between 10 and 50 airplanes), and 14 are likely to be small operators (fewer than 10 airplanes).

What Are the Uncertainties Affecting the Potential Costs of This Rule?

The cost of a security program could be significantly reduced if the air cargo carrier does not transport any people other than its own employees. To avoid underestimating the potential total cost, the FAA assumed that every affected air cargo operator will occasionally transport people other than their employees. Further, the TSA has not finalized its requirements. This regulatory evaluation does not assume that the TSA will require the screening of cargo. The next question identifies some assumptions about the content of the potential security program. We have not included the potential costs of screening air cargo itself in the estimated costs of these security programs.

What Are the Bases for the Estimated Costs of a Security Program?

For the purpose of this economic analysis, we have assumed, for cost purposes only, that the following types of costs might be incurred. Actual costs may vary between programs sought by operators and approved by the TSA. Further, the TSA may choose to require certain components of a security plan that will differ from the assumptions included in the FAA cost analysis. The FAA assumes that air cargo carriers will

incur costs from reviewing their employee employment files, performing employee background checks, developing procedures to perform security clearances on non-employee passengers, and applying to the TSA for approval in creating their programs. They will incur similar annual costs in operating the program.

How Much Will It Cost To Establish and Operate a Security Program?

The FAA estimates that establishing a security program will cost, on average, about \$250,000 for a large air cargo airline, about \$75,000 for a medium sized air cargo airline, and about \$20,000 for a small air cargo airline. The annual cost to operate a security program will average about \$120,000 at a large air cargo airline, about \$40,000 at a medium sized air cargo airline, and about \$10,000 at a small air cargo airline. Thus, if all of the affected air cargo carriers chose to establish security programs, the total first-year cost will be \$1.705 million. However, several air cargo operators have voluntarily developed personnel security programs that include some or most of the activities envisioned by the FAA in its cost estimates. Thus, those air cargo operators have already made many of these expenditures and their estimated costs will be lower than those projected. Nevertheless, in order to ensure that the costs are not underestimated, the FAA assumed that no air cargo operator has such a program. Using an anticipated 5.3 percent growth rate of the air cargo industry, the annual costs of operating security programs for 10 years would be \$10.265 million. Thus, it will cost air cargo operators a total of \$12.330 million, which has a present value of \$9.217 million using the 7 percent discount rate required by the Office of Management and Budget.

How Much Will It Cost To Install Reinforced Flightdeck Security Doors?

The FAA calculated that installing reinforced doors on the 540 cargo airplanes would cost air cargo operators \$66.5 million in 2003.

TABLE 1.—AVERAGE COST PER AIRPLANE TO INSTALL A REINFORCED DOOR BY TYPE OF AIRPLANE

Type of airplane	Door kit cost	Numbers of labor hours to install	Total labor costs	Number of days out-of-service	Lost net revenue per day	Total lost net revenue	Total costs to install
727	\$65,000	96	\$7,680	2	\$20,500	\$41,000	\$113,680
737	50,000	96	7,680	2	4,500	9,000	66,680
747/100/200/300	210,000	172	13,760	4	24,500	98,000	321,760
747/400	51,500	96	7,680	2	24,500	49,000	112,020
757	50,000	96	7,680	2	20,500	41,000	98,680
767	50,000	96	7,680	2	20,500	41,000	98,680
DC-10	50,000	96	7,680	2	24,500	49,000	106,680

TABLE 1.—AVERAGE COST PER AIRPLANE TO INSTALL A REINFORCED DOOR BY TYPE OF AIRPLANE—Continued

Type of airplane	Door kit cost	Numbers of labor hours to install	Total labor costs	Number of days out-of-service	Lost net revenue per day	Total lost net revenue	Total costs to install
DC-8	42,000	72	5,760	2	20,500	41,000	88,760
DC-9	42,000	72	5,760	1.5	4,500	6,750	54,530
MD-10/11	45,000	96	7,680	2	24,500	49,000	101,680
A-300	50,000	192	15,360	4	20,500	82,000	147,360
A-300-600	50,000	192	15,360	4	20,500	82,000	147,360
A-310	50,000	192	15,360	4	20,500	82,000	147,360

Are There Any Other Costs That Would Be Associated With These Reinforced Doors?

Reinforced flightdeck security doors have electronic systems that would need to be periodically inspected, maintained, and possibly repaired. It would take 8 additional maintenance labor hours every year for these tasks, and the average annual materials costs are minimal. These increased maintenance costs would total 4.4 million between 2004 and 2013, which has a present value of 3.0 million.

Reinforced flightdeck security doors and associated doorway strengthening

materials would add weight to the airplane, which would increase fuel consumption. The FAA estimated that the installed door would add 120 pounds to a large cargo airplane, 90 pounds to a medium sized cargo airplane, and 75 pounds to a small cargo airplane. Each additional pound increases annual fuel consumption by 12.25 gallons for a large cargo airplane, 19.1 gallons for a medium sized cargo airplane, and 5.75 gallons for a small cargo airplane. Using a price of \$0.80 per gallon, the annual additional fuel cost would be \$700,000 in 2004, increasing to \$1.1 million in 2013.

These additional fuel costs would total \$9.5 million between 2004 and 2013, which has a present value of \$6.7 million.

What, Then, Are the Total Costs of Installing These Doors?

As shown in Table 2, the total costs of installing reinforced security flightdeck doors would be about \$80.450 million, which has a present value of about \$76.225 million. Of particular note is that the biggest expenditure of \$66.5 million would occur in 2003, the first year.

TABLE 2.—TOTAL AND PRESENT VALUES IN 2003 OF COSTS TO INSTALL REINFORCED SECURITY DOORS IN CARGO AIRPLANES THAT CURRENTLY HAVE FLIGHTDECK DOORS

[In millions of dollars]

Cost to retrofit doors	Increased maintenance cost (2004–2013)	Present value increased maintenance	Increased fuel costs (2004–2013)	Present value increased fuel cost	Total cost	Present value total cost
\$66.499	\$4.406	\$3.007	\$9.542	\$6.722	\$80.447	\$76.228

What Is the Net Economic Impact of This Rule?

If all air cargo operators affected by the final rule chose to develop a TSA-approved security program instead of installing reinforced flightdeck security doors, they would save about \$68.117 million between 2003 and 2013, which has a present value of \$67.011 million. More importantly, they would save \$64.704 million by April 9, 2003. It should be noted that to the extent that several air cargo operators have voluntarily developed these programs, the cost savings have been underestimated. Further, an individual operator has the option to install the reinforced flightdeck security door if it would be financially advantageous. Thus, the FAA determined that this rule provides substantial cost savings to affected air cargo operators.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall

endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that

the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action provides equal regulatory relief to all air cargo carriers. Therefore, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA assessed the potential effect of this rulemaking and determined that it provides equal

regulatory relief to both U.S. (under part 121) and foreign air cargo carriers (under part 129). Therefore, the FAA determined that this rule will have a minimal effect on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

What Other Assessments Has the FAA Conducted?

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this

rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Plain English

Executive Order 12866 (58 FR 51735, October 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this final rule easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the question and answer format helpful in understanding the regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

What Urgency Requires Immediate Adoption of These Changes?

Under current rules, operators should have installed reinforced doors by April 9, 2003, or the airplane could not be operated after that date. However, the 2003 Consolidated Appropriations Resolution mentioned previously effectively postponed the compliance date for all-cargo aircraft. Absent additional action by Congress, this legislative provision will expire on September 30, 2003. As a result, effective October 1, 2003, cargo operators will have to have installed doors on the affected aircraft or not operate those aircraft.

We have changed the April 9, 2003, date to October 2003, to correspond with the Congressional action. Time is of the essence to operators. The doors are expensive and there is a significant lead-time required to order and install the doors. Cargo operators need to know immediately that there is an alternative to installation of reinforced doors.

Additionally, operators need time to evaluate the requirements of the TSA security procedures, and determine if they can adopt a new security program before the deadline. Delaying the rule for notice and comment would create

uncertainty for operators, and frustrate the purpose of the rule.

Further, the FAA received a large number of public comments on this subject through the other rulemakings discussed in this document. We considered those comments in developing this rule.

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." In the context of the APA, impracticable means that, if notice and comment procedures were followed, they would defeat the purpose of the rule. As explained above, the delay associated with notice and comment would negate the security option as a viable alternative to the reinforced door requirement.

For the reasons discussed previously in this document, the FAA finds that notice and public comment on this final rule are impracticable, unnecessary, and contrary to the public interest. This final rule must be adopted promptly to create the certainty and the time needed by cargo operators to meet the airplane security requirements.

Lists of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 121 and 129 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105.

■ 2. Sections 121.313(j)(1) and (2) are revised to read as follows:

§ 121.313 Miscellaneous equipment.

* * * *

(j) * * *

(1) After April 9, 2003, for airplanes required by paragraph (f) of this section to have a door between the passenger and pilot or crew rest compartments,

(i) Each such door must meet the requirements of § 25.795(a)(1) and (2) in effect on January 15, 2002; and

(ii) Each operator must establish methods to enable a flight attendant to enter the pilot compartment in the event that a flightcrew member becomes incapacitated. Any associated signal or confirmation system must be operable by each flightcrew member from that flightcrew member's duty station.

(2) After October 1, 2003, for transport category, all-cargo airplanes that had a door installed between the pilot compartment and any other occupied compartment on or after January 15, 2002, each such door must meet the requirements of § 25.795(a)(1) and (2) in effect on January 15, 2002; or the operator must implement a security program approved by the Transportation Security Administration (TSA) for the operation of all airplanes in that operator's fleet.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S. REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 3. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.49 U.S.C.

■ 4. Sections 129.28(c)(1), (2), and (3) are revised to read as follows:

§ 129.28 Flightdeck security.

* * * *

(c) * * *

(1) Except for a newly manufactured airplane on a non-revenue delivery flight, no foreign air carrier covered by § 129.1(a) may operate:

(i) After April 9, 2003, a passenger carrying transport category airplane within the United States, except on overflights, unless the airplane's flightdeck door installation meets the requirements of paragraphs (c)(2) and (c)(3) of this section or an alternative standard found acceptable to the Administrator.

(ii) After October 1, 2003, a transport category all-cargo airplane that had a

door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States, except on overflights, unless the airplane's flightdeck door installation meets the requirements of paragraphs (c)(2) and (c)(3) of this section or an alternative standard found acceptable to the Administrator; or the operator must implement a security program approved by the Transportation Security Administration (TSA) for the operation of all airplanes in that operator's fleet.

(2) The door must resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 joules (221.3 foot-pounds) at the critical locations on the door, as well as a 1,113-newton (250 pounds) constant tensile load on the knob or handle, and

(3) The door must resist penetration by small arms fire and fragmentation devices to a level equivalent to Level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

* * * *

Issued in Washington, DC, on July 11, 2003.

Marion C. Blakey,
Administrator.

[FR Doc. 03–18075 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P

[FR Doc. 03-24066 Filed 9-29-03; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 129

[Docket No. FAA-2003-15653; Amendment Nos. 121-287 and 129-38]

RIN 2120-AH96

Flightdeck Security on Large Cargo Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the *Federal Register* on July 18, 2003 (68 FR 42874). That rule provided an alternative means of compliance to operators of all-cargo airplanes that are required to have a reinforced security flightdeck door.

EFFECTIVE DATE: This correction is effective on September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, telephone (202) 267-9579.

Correction

In the final rule FR Doc. 03-18075, published on July 18, 2003, (68 FR 42874), make the following corrections:

1. On page 42874, in column 1 in the heading section, beginning on line 4, correct "Amendment Nos. 121-287 and 129-37" to read "Amendment Nos. 121-287 and 129-38."

Issued in Washington, DC on September 23, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03-24745 Filed 9-29-03; 8:45 am]

BILLING CODE 4910-13-P

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to one of the provisions of the Customs Regulations that implement the trade benefits for Caribbean Basin countries contained in section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA). The interim regulatory amendments involve the brassieres provision of section 213(b) and primarily reflect changes made to that statutory provision by section 3107 of the Trade Act of 2002. The specific statutory changes addressed in this document involve the minimum U.S. material content requirements that apply for purposes of preferential treatment of brassieres under the CBERA. This document also includes a number of other changes to the CBERA implementing regulations for brassieres to clarify a number of issues that arose after their original publication.

DATES: Interim rule effective September 30, 2003. Comments must be submitted by December 1, 2003.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at the Bureau of Customs and Border Protection, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Operational issues: Robert Abels, Office of Field Operations (202-927-1959).

Legal issues: Cynthia Reese, Office of Regulations and Rulings (202-572-8790).

SUPPLEMENTARY INFORMATION:

Background

Textile and Apparel Articles Under the Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute, codified at 19 U.S.C. 2701-2707) instituted a duty preference program that applies to exports of goods from those Caribbean Basin countries that have been designated by the President as program beneficiaries. On May 18, 2000, the President signed into law the Trade and Development Act of 2000, Public Law 106-200, 114 Stat. 251, which included as Title II the United States-Caribbean Basin Trade Partnership Act, or CBTPA. The CBTPA provisions included section 211 which

amended section 213(b) of the CBERA (19 U.S.C. 2703(b)) in order to, among other things, provide in new paragraph (2) for the preferential treatment of certain textile and apparel articles, specified in subparagraph (A), that had previously been excluded from the CBI duty-free program. The preferential treatment for those textile and apparel articles under paragraph (2)(A) of section 213(b) involves not only duty-free treatment but also entry in the United States free of quantitative restrictions, limitations, or consultation levels. Paragraph (2)(A) of the statute includes, in clause (iv), a specific provision covering brassieres from designated CBTPA beneficiary countries.

On October 2, 2000, the President signed Proclamation 7351 to implement the provisions of the CBTPA. This Proclamation, which was published in the *Federal Register* (65 FR 59329) on October 4, 2000, modified the Harmonized Tariff Schedule of the United States (HTSUS) by, among other things, the addition of a new Subchapter XX to Chapter 98 to address the majority of the textile and apparel provisions of the CBTPA. Within that Subchapter XX, the brassieres provision of paragraph (2)(A)(iv) of the CBTPA statute is dealt with in U.S. Note 2(d) and in subheading 9820.11.15.

On October 5, 2000, the U.S. Customs Service (now the Bureau of Customs and Border Protection (CBP)) published in the *Federal Register* (65 FR 59650) T.D. 00-68 to amend the Customs Regulations on an interim basis in order to set forth basic legal requirements and procedures that apply for purposes of obtaining preferential treatment of textile and apparel articles pursuant to the provisions added to section 213(b) by the CBTPA. Those interim regulations, consisting of §§ 10.221 through 10.227 of the Customs Regulations (19 CFR 10.221 through 10.227), include, in paragraph (a) of § 10.223, a list of the various groups of articles that are eligible for preferential treatment under the statute. Paragraph (a)(6) of § 10.223 specifically addressed the basic CBTPA brassieres provision of subclause (I) of paragraph (2)(A)(iv) of the statute and subheading 9820.11.15 of the HTSUS. The regulatory texts set forth in T.D. 00-68 did not address subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute and U.S. Note 2(d) of Subchapter XX, Chapter 98, HTSUS, because under the terms of the statute those provisions applied only to articles entered on or after October 1, 2001.

On October 4, 2001, CBP (as legacy Customs) published in the *Federal*

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[CBP Dec. 03-29]

RIN 1515-AD24

Preferential Treatment of Brassieres Under the Caribbean Basin Economic Recovery Act

AGENCY: Customs and Border Protection, Department of Homeland Security.